

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JERMELL DARNELL JOHNSON, et al.,

Plaintiffs,

v.

Case No. 2:09-cv-264
HON. R. ALLAN EDGAR

STEVEN A. COHEN, et al.,

Defendants.

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REPORT AND RECOMMENDATION

Plaintiffs, two state prisoners, filed this action pursuant to 28 U.S.C. § 1338 for alleged copyright violations. On March 23, 2010, Plaintiffs amended their complaint to change the named Defendants, but did not provide addresses for them. On April 2, 2010, Plaintiffs provided addresses for the named Defendants. Summons were issued upon Defendants Paul Allen and Steven A. Cohen initially on May 20, 2010, and again on September 28, 2010. However, efforts by the U.S. Marshal's Service to serve the summons and complaint upon these individuals have proved unsuccessful, as the summons were returned "unclaimed - unable to forward."

Rule 4(m) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to effect service within 120 days of filing of the complaint. *See Moncrief v. Stone*, 961 F.2d 595, 596 (6th Cir. 1992); *Friedman v. Estate of Presser*, 929 F.2d 1151, 1155 (6th Cir. 1991). Over 120 days have elapsed since the filing of Plaintiffs' complaint and Plaintiffs have failed to effect service on Defendants. Therefore, Plaintiffs' complaint is properly dismissed without prejudice for failure to prosecute.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3. Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: December 9, 2010